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MR. JUSTICE SOMAYYA'S RETIREMENT.

In the retirement of Mr. Justice Somayya from the Madras High Court, Madras has lost the services of one of her ablest Judges. The fitting tribute paid by the Advocate-General on behalf of the Bar reflects the affection and the high regard of the profession for the retiring judge. My acquaintance with him dates back to the days of his apprenticeship and as he himself was good enough to say so on the occasion of his elevation to the Bench, I was in some measure responsible for his giving his undoubted abilities a chance by undergoing his apprenticeship in Madras and settling down to practice here.

It was my privilege to have had intimate association with him in the profession and I can recall several cases in which he instructed me both here and in the moffussil. Though in my fairly long experience at the Bar I had come in contact with several members of the profession, there was none to match him in the quickness with which he could post his senior in the main facts of a case and getting him ready for the argument in Court in the shortest possible time. As a Judge he exhibited the same qualities of quick comprehension and a mastery of the essentials of a case. In the sifting of complicated facts, in the ability to rummage through documents and accounts in vernacular and English, whether in print or in manuscript, there was no judge to equal him and none to beat him. I have known and practised before several Judges of the High Court but barring the late Sir K. Srinivasa Aiyangar I should think there was no one to surpass him in this respect. As a Judge his feeling for the under-dog might have even occasionally led him to overstep the limits of what in common parlance is termed judicial rigour and strictness. He could never in the disposal of causes that came up before him, bring himself to brook the conduct of an unfilial son, of a cruel husband, of a brother swayed by unfraternal feelings, a rapacious money-lender taking advantage of a debtor in impecunious circumstances or an unsympathetic landholder grinding down his tenancy. He would draw upon all the resources of his virile intellect to strain every point to set right a wrong that has been done and to inflict a proper

punishment upon a cruelty that has been perpetrated. In that attitude of mind of his even the most resourceful and tactful advocate would be set at bay. It was difficult to realise that in that mood the judge before whom the practitioner was appearing was the simple, unostentatious, unassuming, and endearing Somayya one came across in private life. His decisions in causes that came up before him were marked by a high sense of justice in the widest sense of the term. His reported judgments though they may be said to be lacking in a sense of form and polished style, reveal a deep learning and erudition and a wide knowledge of case law.

We are often treated in legal gatherings and in addresses by judges and eminent members of the bar to discourses on the need for effective steps being taken for encouragement of the junior bar and for bringing out the latent talent in them. But I know of no better recipe than a kind word and generous appreciation from a judge or a leader of the Bar that would promote the interests of the younger members of the profession. Mr. Justice Somayya when sitting as a single judge in the second appellate bench rigorously followed the practice of asking the junior to get on with a second appeal and waiting for the senior if his *prima facie* inclination was against the contentions advanced by the junior. There is an evident advantage in this practice being followed by other judges for it serves to bring out the latent talent of young men while at the same time avoiding the baneful consequences, it may be, of the junior being blamed for an adverse decision and the senior losing his clientele. The practice will I venture to suggest in no way lead to a delay in the disposal of the causes. On this topic of betterment of the prospects of the junior bar and a fitting training being given to the younger members of the profession I would urge for the serious consideration of the profession and the Honourable judges the practice of the senior arguing some main or difficult points in the case and a junior following him. Such a procedure would have the sanction of the practice generally followed in England and held as being applicable to this country by Mr. Justice Bashyam Aiyangar.

In private life Mr. Somayya is generous to a fault and full of gratitude to those that have done him good in however modest a measure, which he is ever ready to acknowledge. Mr. Somayya is still fresh and vigorous in mind and it is the fervent hope of all the members of the legal profession in Madras and his admirers and friends that his services may be utilised in some sphere of public usefulness though by temperament he is shy and would fain resign himself to a retired life in his native village of Kuppam.

A. KRISHNASWAMI AIYAR.

The members of the Madras bar assembled in the second Court hall of the Madras High Court on Tuesday the 6th August to bid farewell to His Lordship Mr. Justice Somayya on the eve of his retirement. The Advocate General on behalf of the members of the bar said :—

"The time has come when we, the members of the profession, have to take leave of you as a Judge. The close and intimate relationship which you have been maintaining with us even after your elevation to the Bench makes the parting even more poignant and we are assembled here to bid your Lordship good-bye and wish you many more years of good health, good cheer and more than anything else, active usefulness to the public. The time that you have been with us has sped by all too swiftly and notwithstanding that you are physically fit and mentally alert and agile, the inflexible rule fixing the age limit obliges you to retire. On an occasion like this, it is but proper that we should speak out our mind as to what we have felt about you as a Judge during your tenure of office and in so doing, we assure you that we indulge in no conventional praise or formal appreciation of your high attainments, character and warm and affectionate nature and transparent sincerity. There can be no motive for indulging in any flattery as we have no object to gain or purpose to serve in attributing to you virtues you do not possess and therefore you may take it that the sentiments that we express come right from the heart and give genuine expression to what we feel. The essence of it can be summed up in one sentence. We feel to-day that in you we are losing a great Judge and a human Judge. We, the members of the Bar, can proudly claim that despite your elevation to the Bench, you have never at heart ceased to be a member of the Bar extending to the members thereof a steady sympathy and bountiful cheer; you have made us realise—because you have lived and practised that ideal so much preached in theory—that the Bench and the Bar are component parts of a single organisation. Your long experience at the Bar, your devotion to duty, the variegated nature of the voluminous work turned out by you, your mastery of detail in the realm of fact and subtle perception of the correct principles in the realm of law, attracted—as was expected—the attention of our learned Chief Justice and your elevation to the Bench in 1939 was no surprise and caused no disappointment. Those very same qualities adverted to by me enabled you to administer justice not in any narrow, conventional or technical spirit but with a breadth of out-look which was singularly refreshing. Few people could excel you in your mastery of the facts of any case, however complicated the details might be and of the principles of law to be applied to the tangled web of facts. The swiftness of your understanding and capacity to get to the crux of any case in the shortest possible time were perhaps occasionally disconcerting to the less initiated members of the Bar but your sense of sympathy and innate courtesy very often saved the situation.

The Bench affords in a greater measure opportunities which even if not wholly denied cannot find adequate scope for expression at the Bar. While it is the function of the lawyer to contribute to the shaping of the law by presenting his client's cause in the best possible light, it is the peculiar privilege of the Judge not only to administer justice according to law but also to mould the law in order to serve the ends of justice and thereby help its growth to suit changing times and circumstances. You never failed to avail yourself of such opportunities. You brought to bear a progressive outlook upon the interpretation and exposition of legal principles. The equitable approach adopted by you in solving legal problems very often tended to mitigate the rigour, if not wholly eliminate the anomalies of Statute Law. One is tempted to recall how averse you were to uphold a plea of limitation or such other technical bar to a suit and how you would struggle to give the statutory provision an interpretation reasonably possible, which would enable the suitor to have justice done on the merits. Neither technicalities of the law nor hide-bound tradition ever stood in the way of your attempt to find a solution and that a just one, to meet the needs of any case.

I cannot resist the temptation of remarking that very often learning begets pride and results in dogmatism, and intellectual swiftness leads to impatience and intolerance. I am however happy to say—and I know I am voicing the views of the entire Bar in this respect—that in your case, at any rate, great erudition and humility, self-confidence and openness to conviction, intellectual rapidity and patience, have been happily associated together. May-be there were occasions—I knew there were—when you could not control your temper and you allowed your words to fly like bullets. But the impatience and fury in such cases, though apparently aimed at the member of the Bar arguing, was really due to sensing a great injustice or fraud on the part of the party or an attempt to evade the difficulties in the case pointed out by you to counsel.

Another aspect of your career on the Bench I may also refer to—your boldness and courage. The fear of possible public criticism or official frown never deterred you from expressing yourself freely or doing what you felt to be right and just.

I cannot omit to make a reference to your treatment of the junior section of the Bar. Every junior felt at ease and quite at home before you and far from being at a disadvantage he was perhaps at an advantage with a senior appearing against him. Remembering that opportunities make a man, you were throughout anxious to give the junior member full freedom of expression and argument but at the same time you were not slow to chide him if you discovered that he was slack in his preparation of the case. Your insistence on an exhaustive research of case-law became more pronounced against the senior when a junior appeared against him. Your Lordship has never dismissed any case.

I am afraid I have spoken too long, but from to-morrow you will be free from the harangues of advocates.

I bid you good-bye on behalf of the Bar and the best wishes of the Bar are with you in your retirement.

The members of the Bar whether junior or senior have received the maximum accommodation at your Lordship's hands."

Mr. Justice Somayya after thanking the Advocate-General and the members of the Bar shook hands with the members of the Bar.

FAREWELL ADDRESS TO MR. JUSTICE SOMAYYA BY P. SOMASUNDARAM, Advocate at the Madras Advocate Association :

MR. JUSTICE SOMAYYA, MY LORDS, FRIENDS,

We have met here in an atmosphere of austerity. On behalf of the Madras Advocates' Association, I extend to you a very cordial welcome on this occasion of bidding farewell to our friend Mr. Somayya. As I rise to speak my mind goes back to the year 1910, when Mr. Somayya and myself were thrown together as comrades at law in the Chambers of the late Mr. Peri Narayanamurty who will be remembered with gratitude by those who came under his influence not only as a successful lawyer but as a great man. Both of us owe not a little to his kindly and almost paternal interest in us and his good example in the formative period of our professional life.

It is a source of pride and pleasure to me to have the privilege of bidding you farewell and wishing you long life, health and plentiful rest in the comparatively cool retreats of your homeland of Kuppam.

After a distinguished University career you joined the Bar in 1911 and in a short time arrested the attention of Judges by your painstaking and careful preparation of cases and by your learning. I remember quite vividly the compliment paid to you by the great and discerning judge the late Sir T. Sadasiva Iyer at the close of one of your earliest performances. Those were days when lawyers and judges used to draw freely on English law and precedents and they occasionally indulged in excursions into the realm of trans-atlantic law and it was the occasion of one such adventure of yours that elicited the learned Judge's appreciation.

You had your early struggles at the Bar but your prodigious industry, learning and quick mastery of the facts of a case, however complicated it be, soon won for you the appreciation of a large and grateful clientele. You became one of the acknowledged leaders of the Bar. I crave leave to draw pointed attention to one outstanding trait in your relations with your juniors and less fortunate friends. Your kindness and unostentatious generosity often lifted them out of somewhat embarrassing situations and secured for you their abiding loyalty and friendship.

Your elevation to the Bench was but the consummation of your distinguished career at the Bar. It is not my purpose nor is it the occasion to review your work as a Judge. The law reports, official and non-official, bear ample testimony to your great learning, especially in the field of Hindu Law and Land tenures. But your real strength is better known and appreciated in the more difficult but less spectacular work of disentangling questions of fact which often baffle judges. It was a real pleasure to see you follow the facts critically and marshal them. Once you came to grips with the essentials of the case, no one escaped your hold. Thereafter the task of counsel is over, he having had to succumb to the inevitable. In all this you were animated by a strong passion to get at the truth and do justice. No technicality was allowed to prevail in the end.

We are living in very specious though difficult times. We shall soon have to face and solve great problems emerging from the early redemption of the pledges given by the British Government and from the rapidly changing world forces. In the process of the birth of a new order, we have necessarily to pass through much travail. I trust that the State will avail itself of the wisdom and knowledge of its distinguished servants like you, men known for their sympathy and understanding of the common men and the under-dog in the shaping of this new order. I know you and distinguished colleagues in their own time will not only not grudge but be most willing to place their knowledge at the disposal of the public for the reform of law particularly in the field of Evidence Procedure and Limitation. I take a somewhat alarming view of the ever increasing perjury in the law courts of the terrible decline in moral values. It is a very sad spectacle and it is the paramount duty of the state to so alter its laws and reorganise its judicial system as to put the minimum premium on man's baser instincts in his aggressive attempts at the person and property of his fellow men. Jurists and judges like you must bend their energies towards this task of man's regaining his moral equilibrium.

I cannot omit making reference to your great interest in the healing art of homeopathy. I am not sure whether in the exuberance of your enthusiasm for the great cause, you have not already qualified yourself as a doctor.

In this field of humane endeavour for the relief of the suffering you will find ample scope for absorbing your well-earned pleasure.

May the Almighty God give you long life and sound health.

SUMMARY OF ENGLISH CASES.

HOBOURN AERO-COMPONENTS LTD.'S AIR RAID DISTRESS FUND, *In re* RYAN *v.* FORREST, (1946) 1 Ch. 194 (C.A.).

Charity—Public or private—Test—Employees of firm contributing to a fund to be used not for the general benefit but for individual benefit of those who contributed—If good charitable trust.

Where a number of employees of a firm, actuated by motives of self-help, agreed to a deduction from their wages to constitute a fund to be applied for their own benefit without any question of poverty coming into it, there is created only a private and personal trust put up by the potential and contemplated beneficiaries themselves. The fact that one of the objects was to give relief for air raid distress to subscribers will not make it one for a good charitable purpose. When the persons to benefit are a private group of individuals that circumstance cannot be

discounted or the effect of it destroyed merely by introducing some object, which if it was for the benefit of a sufficiently public class of beneficiaries would be a good charitable purpose. (1946) 1 Ch. 86, affirmed.

F. De Jong & Company, Ltd., *In re*, (1946) 1 Ch. 211 (C.A.).

Company—Winding-up—Preference shares—Dividends in arrears—Priority over ordinary shares in winding-up—Right to.

Prima facie, and in the absence of words making provision for it in the memorandum and articles of association, cumulative preference dividends are not payable out of the assets in a winding-up. It is a question of construction in each case whether the memorandum or articles provide that such arrears of dividend shall be payable in a winding up. Where it is provided that the preference shares will "have priority as to dividend and capital for the time being" it must be construed as referring to the rights in winding-up and "dividend" in the passage must mean "arrears of dividend."

Rex *v.* Grondkowsk, (1946) 1 K.B. 369 (C.C.A.).

Criminal Trial—Joint trial—One accused putting the blame on the other—Discretion of trial judge to refuse separate trials—Interference by Court of appeal.

It is not the law that wherever it appears that one prisoner is going to lay the blame on the other, or another, there must be separate trials. The law is and always has been, that this is a matter of discretion of the Judge at the trial. The discretion no doubt must be exercised judicially, that is, not capriciously. The Judge must consider the interests of justice as well as the interests of the prisoners.

If improper prejudice has been created whether by a separate or joint trial, the Court of appeal will interfere but not otherwise.

Rosenthal *v.* Alderton & Sons, Ltd., (1946) 1 K.B., 374 (C.A.).

Tort—Damages for detinue—Assessment—Crucial date.

In an action for detinue the value of the goods claimed but not returned ought to be assessed as at the date of the judgment or verdict and not the date of refusal of plaintiff's demand for return of the goods. No different principle is applicable as to the value of certain of the goods which the defendant had in fact sold away.

Eyre *v.* Johnson, (1946) 1 All.E.R. 719 (K.B.).

Lease—Covenant by lessee to yield up in repair—Defence regulations prohibiting repair above certain cost without licence—Effect on liability for damages for breach of covenant.

The fact that it has become difficult or even impossible for a tenant to perform his covenant to yield the premises in repair (because of Defence Regulations prohibiting repair above certain cost without licence) does not relieve him of the obligation of paying damages for the breach of the covenant.